REMARKS/ARGUMENTS

Re-examination and favorable reconsideration in light of the above amendments and the following claims are respectfully requested.

Claims 20, 23 - 31, 33, and 34 are pending in the application. Currently, all claims stand rejected.

By the present amendment, claims 23, 26 - 31, and 33 have been amended.

In the office action mailed July 7, 2010, claims 20 and 23 - 31 were rejected under 35 U.S.C. 112, first paragraph as failing to comply with the enablement requirement. With respect to claims 23 - 31, this rejection is now moot in view of the amendments to change the claim dependency. With respect to claim 20, the rejection is simply not understood. The sensing means is enabled by the disclosure of the sensor 41 and means for supplying information to the FADEC about the sensed torque change is supported by the section of paragraph 0026 cited by the Examiner in the office action. The means for supplying bleed air in response to the sensed torque change is in paragraph 0027. Thus, the claim is well supported and well enabled by the original specification. With regard to this rejection, the Examiner has made no showing that one of skill in the art would need undue experimentation to enable the invention. Thus, the Examiner has not met his burden under the MPEP. With respect to the averment that Applicants are claiming "torque," the Examiner needs to read the claim again. Applicants clearly say that they are sensing a change in torque both in the claim and in the specification. The Examiner is kindly requested to withdraw the rejection for the reasons stated above.

Further in said office action, claims 20, 23 - 25, 33 and 34 were rejected under 35 U.S.C. 103(a) as being unpatentable

over Wojciehowski et al. in view of Schafer et al. and claims 26, 27, and 30, 31 were rejected under 35 U.S.C. 103(a) as being unpatentable over Wojciehowski et al. in view of Schafer et al. and further in view of alleged admitted prior art on page 5, paragraph 0028.

The foregoing rejections are traversed by the instant response.

With respect to the rejection of claims 20 and 34 over the combination of Wojciehowski et al. in view of Schafer et al., the Examiner acknowledges that Wojciehowski does not disclose any means for monitoring torque change on a rotor drive shaft which is indicative of a power demand and means for supplying information about said monitored torque to any FADEC. Schafer et al., while disclosing a FADEC, suffers the same deficiencies as Wojciehowski et al. The Examiner can not point to any place in Schafer et al. which says that these claimed elements are present in Schafer et al.'s system. Since there is no explicit disclosure of these elements in Schafer et al., there are no facts in evidence which support the legal conclusion of obviousness.

It is well settled law that rejections based on 35 U.S.C. 103 must rest on a factual basis. In making such a rejection, the Examiner has the initial duty of supplying the requisite factual basis and *may not*, because of doubts that the invention is patentable, resort to *speculation, unfounded assumptions or hindsight reconstruction* to supply deficiencies in the factual basis. See *In re Warner,* 379 F.2d 1011, 1017 (CCPA 1967); also see *In re Fine,* 837 F.2d 1071, 1073 (Fed. Cir. 1989)(It is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness) and *In re Steele,* 305 F.2d 859, 862 (CCPA 1962)(A rejection should not be based on speculation and assumptions). Conspicuously missing from the

current record is any evidence other than the Examiner's speculation that Schafer et al. teaches that FADECs … are well known in the art to monitor and control elements in an engine system (which seems to include the torque of an engine) …. Schafer et al. is totally silent on whether torque changes are being monitored and most certainly does not disclose the placement of a sensor for sensing torque on any shaft. It is submitted that because of this, the Examiner has failed to meet his evidentiary burden of supplying the requisite factual basis to allow one to reach the legal conclusion of obviousness.

With regard to the Examiner's comment about engine speed being equal to power divided by the torque, while this may be true, there is nothing in Schafer et al. which says that they monitor or sense changes in torque or power. Thus, even if Schafer et al. is monitoring engine speed, it does not necessarily mean that Schafer et al. is sensing torque changes on a drive shaft and supplying information about the sensed torque change to the FADEC and supplying bleed air from the engine in response to the sensed torque change. Schafer et al., by the Examiner's own admission, is sensing the power requested. It seems to Applicants that Schafer et al. is monitoring engine speed by sensing the power requested. This is logical given the fact that there is no mention of torque in Schafer et al. To say that Schafer et al. is sensing torque is to engage in impermissible speculation. The Examiner is obligated to follow the existing case law which says that he can not fill in the deficiency in Schafer et al. by engaging in speculation. Thus, even if the references were combined, there is not the factual basis to support the legal conclusion of obviousness.

Claims 23 - 25 and 33 are allowable for the same reasons as their parent claims as well as on their own accord.

With regard to the rejection of claims 26, 27, 30, and 31, these claims are also allowable for the same reasons as their parent claims. Further, the alleged admitted prior art, assuming arguendo that it is prior art, does not cure the aforementioned deficiencies of Wojciehowski et al. and Schafer et al. Paragraph 0028 is not prior art. Even though the paragraph may says that certain elements in the overall invention may be any suitable device known in the art, the incorporation of them into the overall system as disclosed is not known in the prior art. If the Examiner is going to maintain his position that paragraph 0028 is prior art, then the Examiner is requested to provide Applicants with legal authority for this position. With regard to the Examiner's reason for combining the reference, Applicants wonder just which accessories in Wojciehowski et al.'s system the Examiner is referring to. As for providing additional accessories in Wojciehowski et al., there is no reason to do so which flows from the prior art. Wojciehowski et al. has no need for any additional accessories. The Examiner forgets that the fact that a reference could be modified is not a reason to conclude that a claimed invention is obvious.

Applicants note that there is no prior art rejection of claims 28 and 29. Due to the change in dependency, it is submitted that these claims now contain allowable subject matter.

For the foregoing reasons, the instant application is believed to be in condition for allowance. Such allowance is respectfully solicited.

Should the Examiner believe an additional amendment is needed to place the case in condition for allowance, he is hereby invited to contact Applicants' attorney at the telephone number listed below.

The instant amendment after final rejection is believe to place the case in condition for allowance and should be entered. Further, the amendment does not raise any new issue which requires consideration and/or search on the part of the Examiner and does not raise any issue of new matter. The Examiner has already searched the subject matter of all claims in the case. Entry is kindly requested.

A notice of appeal is enclosed herewith in the event that the Examiner maintains the rejections of record.

The Director is hereby authorized to charge the notice of appeal fee of $540.00 to Deposit Account No. 02-0184.

Should the director determine that a fee is due, he is hereby authorized to charge said fee to said Deposit Account No. 02-0184.

Respectfully submitted,

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